

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
FIRST REGION**

In the Matter of

AMERICAN RED CROSS BLOOD  
SERVICES-NEW ENGLAND REGION<sup>1</sup>

Employer

and

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, LOCAL 633, AFL-CIO

Petitioner

Case 1-RC-21895

**DECISION AND DIRECTION OF ELECTION<sup>2</sup>**

The Employer is a corporation, chartered by Congress, with facilities located in Maine, Vermont, New Hampshire, Massachusetts, and Connecticut. The Employer's Manchester, New Hampshire facility, where it collects and distributes blood and blood products and performs related services, is the location at issue in this case. The Petitioner seeks to represent a unit of eight mobile unit assistants working at the Manchester facility, while the Employer maintains that it is a health care institution and, accordingly, the only appropriate unit is one consisting of all nonprofessional employees working for

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1 The name of the Employer appears as amended at hearing.

2 Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board. In accordance with the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the Regional Director.

Upon the entire record in this proceeding, I find that: 1) the hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed; 2) the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this matter; 3) the labor organization involved claims to represent certain employees of the Employer; and 4) a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

the Employer at its Manchester facility.<sup>3</sup> The Employer's proposed unit would include 79 additional employees in 17 additional classifications. Finally, the Petitioner contends that the facility coordinator-lead is a statutory supervisor and should be excluded from any unit found appropriate, while the Employer contends that the facility coordinator-lead is not a supervisory position and that it should be included in the unit found appropriate.

I have considered the evidence from the hearing, the arguments advanced by the parties on each of the issues, and my prior unit determination involving these parties in Case 1-RC-20193, discussed below. As more fully set forth herein, I conclude that the Employer is a "health care institution" as defined in Section 2(14) of the Act. In this regard, the Employer performs procedures viewed as being devoted to the care of sick persons with sufficient regularity and in a sufficient number to be considered a health care institution. I further find that the petitioned-for unit of mobile unit assistants is not an appropriate unit, since it is too narrow, but I also find that the Employer's proposed unit is not the smallest appropriate unit. Rather, I have applied a "pragmatic or empirical" community of interest analysis based upon which I conclude that the smallest appropriate unit includes all Manchester employees directly involved in the Employer's blood drives.<sup>4</sup> Finally, I do not find it necessary to determine whether the facility coordinator-lead is a statutory supervisor, as I am excluding that position from the unit found appropriate.

## **I. Overview of the Employer's Operations and Structure**

The Employer offered a great deal of evidence regarding its centralized organizational structure. While some of this evidence is useful in analyzing community of interest issues related to the Manchester employees, most of this evidence is not relevant to this proceeding. This is because while, as discussed below, I find that the Employer is a health care institution, in so finding I do not rely on the services provided by the Employer at its other New England facilities. Rather, I find that the only relevant facility in this proceeding is the Manchester facility, since the Employer and the Union agree that a bargaining unit including only Manchester employees is appropriate, although they dispute which positions should be included in such a unit.

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3 The unit the Employer seeks would include all full-time and regular part-time nonprofessional employees, including collection specialists, collection specialists LPNs non-charge, mobile unit assistants, distribution assistants, distribution facility assistants, mobile unit assistants/facility assistants, coordinator facilities services lead, technician instructors, donor center assistants, apheresis coordinators, receptionists, schedulers, donor recruitment representatives, telerecruiters, bookers, account executives, volunteer coordinators and administrative assistants. The parties stipulated that all of these employees are nonprofessional employees.

4 The appropriate unit includes all full-time and regular part-time collection specialists, collection specialist/LPN (non-charge), mobile unit assistants, mobile unit assistant/facility assistants, technician instructors, and donor center assistants employed by the Employer at its Manchester, New Hampshire facility, but excluding all other employees, confidential employees, professional employees, guards, and supervisors as defined in the Act.

The New England Region works under the umbrella of the American Red Cross. The National American Red Cross office is located in Washington, D.C. The New England Region, which includes all of Maine, Vermont, New Hampshire, Massachusetts and Connecticut, collects blood and provides it to numerous hospitals throughout the New England Region.<sup>5</sup> The Employer has facilities in Burlington, Vermont; Bangor and Portland, Maine; Manchester, New Hampshire; Springfield, Worcester, and Dedham, Massachusetts; and Fairhaven, Connecticut. The Region's main corporate headquarters is located in Dedham, Massachusetts, where all divisions supporting the Region are located.<sup>6</sup>

The Employer's fixed facilities, like the one in Manchester, New Hampshire, are called donor rooms, where donors come during the day to donate blood. "Mobiles" are donor events conducted through sponsors, such as an organization or company, working in partnership with the Employer, which provide a place and time to have donors give blood. A mobile is sent to the sponsor's site with a certain number of staff and supplies and the site is set to accept donors and collect blood.

## **II. Status of the Employer as a Health Care Institution**

### **A. Facts**

In the performance of its operations described above, the Employer collects whole blood, donor apheresis, and double red cell donations at its Manchester facility and at offsite blood drives. Donor apheresis (which is also known as pheresis ) is an automated type of donation, in which a donor's blood is put through a centrifuge machine, allowing donors to donate platelets<sup>7</sup> while simultaneously getting back all of their red blood cells and their plasma.<sup>8</sup> Double red cell donations are a type of pheresis procedure in which red blood cells are collected rather than platelets. Donors may give a homologous donation, which means that the blood or blood product is donated for use by anyone. Donations may also be autologous, directed, or limited exposure. Autologous donations refer to drawing blood from an individual who will later be the recipient of that blood.<sup>9</sup> This requires a doctor's order. Directed donations refer to donations of blood made by a donor where the donated blood is directed to a particular patient. This, too, requires a

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5 Connecticut is the most recent area to be included in the New England Region.

6 There was evidence presented that different unions represent bargaining units in other New England Region locations, but each bargaining unit includes different positions. In Connecticut, the bargaining unit is a wall-to-wall unit. It remains unclear, however, if these bargaining units were created as a result of litigation or were agreed to by stipulation. I do not find this information useful here in any case.

7 Platelets are little disc-shaped cells in the blood stream that help control clotting.

8 Plasma can also be collected, but the primary collection goal is platelets.

9 Autologous donations are usually made by individuals scheduled to undergo surgery.

doctor's order. Limited exposure is a type of directed collection. Under this procedure, a donor may give blood more frequently than otherwise allowed.

During the period from March 1, 2004 through February 28, 2005, the employees at the Employer's Manchester facility and at mobile offsite blood drives performed the following procedures: 3,596 apheresis homologous; 13 directed apheresis; 741 double red cell homologous; 62,080 homologous whole blood; 904 whole blood autologous; 36 directed whole blood; and zero limited exposure donations.

During the same period of March 1, 2004 through February 28, 2005, the Employer performed three kinds of blood donation related treatments in New Hampshire, but only one of these was performed by Manchester employees. All three of these treatments require a doctor's order. Therapeutic phlebotomy, which is done by Manchester employees at the Employer's Manchester facility or at off-site drives, is a treatment used on certain patients who have blood related conditions, such as Hemochromatosis, which is when a patient has too many blood cells. Although the patient's blood is removed, it is not used as a donation. During the period in question, Manchester employees performed 36 therapeutic phlebotomies. During this same period of time, the Employer's Dedham, Massachusetts employees provided patients in New Hampshire hospitals with two other treatments, therapeutic apheresis (87 times) and intra-operative autologous transfusion, or IAT transfusion (140 times). Therapeutic apheresis is an apheresis procedure that is used as part of the treatment for a particular medical condition. IAT transfusion is actually done in a hospital operating room with a cell saver machine. Using this machine, the staff is basically able to recycle the surgical patient's own blood. It is a highly specialized procedure and, for the foreseeable future, will continue to be performed in New Hampshire by Dedham employees.

After donated blood is collected, Manchester employees maintain the blood by icing and reicing it until the blood can be sent to the Employer's Vermont or Dedham laboratories. Manchester employees also distribute the blood and blood products to New Hampshire hospitals when it arrives from the Employer's Dedham facility. This blood is packed, processed, and labeled for specific hospitals to be distributed immediately. The blood is packed in such a way that, if left unopened, it is good for 24 hours.

## **B. Legal Analysis**

The Employer contends that it is a health care institution within the meaning of Section 2(14) of the Act. The Petitioner contends that the Employer does not engage in a sufficient number of treatment related blood services to meet the Board's criteria for qualifying as a health care facility.

Section 2(14) of the Act defines a healthcare institution as "any hospital, convalescent hospital, health maintenance organization, health clinic, nursing home, extended care facility, or other institution devoted to the care of sick, infirm or aged persons[s]." Blood banks whose operations are limited to collecting, processing, and distributing blood products are not considered healthcare institutions. *Dane County*

*American Red Cross*; <sup>10</sup> *Green County American Red Cross*; <sup>11</sup> *Sacramento Medical Foundation Blood Bank*. <sup>12</sup> This is not the case, however, where blood bank operations include such patient care procedures as therapeutic phlebotomies and therapeutic apheresis, done with “sufficient regularity and in a sufficient manner.” Such blood banks are considered healthcare institutions. *Syracuse Region Blood Center*. <sup>13</sup>

The Employer argues that its entire New England Region should be analyzed in determining whether or not the Employer as a whole, including the Manchester facility, is a health care institution. I reject such an approach. Rather, I find that the relevant inquiry is what services the Employer provides in Manchester, which is the only relevant location here. Inasmuch as both parties agree that the appropriate unit should be limited to the Manchester location, the only question is what services this Employer provides in Manchester. Clearly, it is possible for the Employer to provide different kinds of services at different locations, so that some locations would be considered health care facilities while others would not. Accordingly, I conclude that the better approach is to look at the only facility at issue in this case. <sup>14</sup>

Looking at the Manchester facility, during the period from March 1, 2004 through February 28, 2005, the employees there performed 36 therapeutic phlebotomies. <sup>15</sup> In *Syracuse*, the Board rejected a “percentage-of-the-employer’s-business standard” for determining whether a blood bank is a healthcare institution, noting that a part of an employer’s operations may have a substantial and regular impact on patient care even if that part makes up only a small percentage of the employer’s total business. <sup>16</sup> In *Syracuse*, the Board found the blood bank to be a healthcare institution even though its performance of therapeutic phlebotomies and apheresis procedures over a 12 month period accounted for less than 1 percent of its total non-therapeutic procedures. Despite the low percentage, the Board reasoned that the employer nonetheless performed the therapeutic procedures with sufficient regularity and in a sufficiently large number and,

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10 224 NLRB 323 (1976).

11 221 NLRB 776 (1975).

12 220 NLRB 904 (1975).

13 302 NLRB 72, 73 (1991).

14 I reject the Employer’s application of the geographic boundaries as determined in the *Syracuse* case to this case. In *Syracuse*, the location at issue encompassed an entire region and that region covered less than a full state, whereas here the location at issue involves a single state that is only a part of the entire region. Moreover, in *Syracuse*, the question of which facilities to include in determining the health care status of the employer’s business was not specifically addressed.

15 I will not consider the therapeutic apheresis or IAT transfusions done in New Hampshire, since they are not performed by the Manchester employees.

16 *Id.* at 73.

as such, was “devoted to the care of sick...persons.”<sup>17</sup> Although the patient-care procedures performed here are a small part of the Employer’s overall Manchester operation, I find that these procedures are performed with sufficient regularity and in a sufficiently large number that the Employer is properly viewed as a health care institution under Section 2(14) of the Act.<sup>18</sup>

### **III. Scope of the Unit**

#### **A. Facts**

All of the Employer’s employees are hourly paid, except for the account executives and donor recruitment representatives. An incentive or bonus plan is available to recruitment staff, except for the volunteer coordinator and the administrative assistant. All of the Manchester employees are subject to the same disciplinary rules, employee manual, and performance review procedure,<sup>19</sup> and have the same fringe benefits and mailboxes.

Maureen Baldini is the Director of New Hampshire operations and, as such, she is responsible for the entire Manchester facility. There are several employees who work primarily out of the Manchester location itself, while other employees, including the petitioned for mobile unit assistants (MUAs), work on mobile drives. While some of the employees working out of the Manchester facility work directly with blood donors, others are involved in more administrative tasks. The employee classifications are described below.

#### **1. Recruitment Employees**

The recruitment employees have two vehicles that are earmarked for recruitment staff to use.<sup>20</sup> As mentioned above, with the exception of the volunteer coordinator and the administrative assistant, they are eligible to earn a bonus. Recruitment staff positions are described as OSHA Category III positions, since there is no exposure to blood or blood components and/or human body fluids or tissue samples. These employees work out of the Manchester facility.

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17 Id.

18 I do not rely on the Employer’s arguments concerning directed and autologous donations inasmuch as the Board considered and rejected similar arguments in *Syracuse*.

19 Donor recruitment representatives and account executives have an additional page used for their performance reviews.

20 The receptionist can use a car for a work-related errand.

(a) Donor recruitment representatives and account executives

The Employer recruits individual donors and sponsor groups through its recruiting employees. There are five donor recruitment representatives and two account executives,<sup>21</sup> who are responsible for recruiting donors, working with sponsors, and following up with sponsors to encourage future drives. One of these employees is responsible for the blood drives that take place at the Manchester facility, while the rest are assigned different geographic areas in New Hampshire. These employees work out of the donor recruitment department in Manchester, though they are often on the road, giving presentations, meeting with sponsors, checking on locations, and providing the sponsor with recruitment supplies such as posters. Donor recruitment representatives and account executives report to the recruitment manager. Donor recruitment employees occasionally come to a blood drive to see how it is going and to encourage future drives.

(b) Administrative assistant

There is an administrative assistant who provides support to the recruitment team. This employee works from 8:00 am to 4:30 pm from Monday through Friday and reports to the recruitment manager.

(c) Booker

The recruitment employees work with the booker, who works out of the Manchester facility. There is only one booker. The booker is responsible for actually booking blood drives. Once she books a drive, she enters the information on the Employer's national networked computer database. She is responsible to make sure that there is adequate staffing to handle the blood drives scheduled on any given day. The booker reports to the manager of recruitment operations and works a regular 8:00 am to 4:30 pm schedule.

(d) Telemarketers

The Employer has 11 telemarketers working to attract donors to drives. These employees work out of the Manchester facility and report to the telemarketing supervisor, who reports to the manager of recruitment operations. The telemarketers contact donors who have given in the past to recruit them for upcoming drives. They call and let past donors know of upcoming drives or to schedule them for a drive. They make reminder calls to donors when the Employer is going to be in their area. The telemarketers also perform first-time donor callbacks, thanking them for coming. These employees work part-time from Sunday through Thursday. Some of the telemarketers work 4:00 pm to 9:00 pm, but most work 5:00 pm to 9:00 pm.

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<sup>21</sup> Account executives are in a higher grade and deal with larger accounts. They are required to achieve a higher blood unit goal and coordinate more blood drives at one time. The two current account executives were previously donor recruitment representatives.

(e) Volunteer coordinator

There is one volunteer coordinator. She is responsible for recruiting, recognizing, and scheduling volunteers who assist the Employer.<sup>22</sup> She attends most of the Manchester facility blood drives. Her hours are usually 8:00 am to 4:30 pm, though she sometimes works in the evening or on a weekend to attend a mobile blood drive. The volunteer coordinator reports to the recruitment manager.

2. Additional Employees Primarily Working From Manchester

(a) Scheduler

There are two schedulers working for the Employer. These two employees are responsible for creating a staff schedule to cover the blood operations at the Manchester facility and at the mobile drives. They schedule the collection specialists, the LPNs, the RNs and the MUAs. The schedulers need to make sure that the drives are staffed appropriately. They are also the individuals an employee would call if they cannot make it into work and, as such, though they generally work 8 am to 4:30 pm every day, they have on-call hours from 8 to 10 pm in the evening and two hours before the earliest start time for any staff person in the morning. The schedulers report directly to Baldini. They are considered OSHA Category III positions.

(b) Receptionist

There are two part-time receptionists, who both work from 8:00 am to 4:30 pm. They answer the phone and greet people coming into the building. The receptionists provide some clerical support as well and prepare the lab coat bins. These are the bins that the MUAs take with them filled with lab coats for the mobile drive staff to wear at mobile blood drives. They also hand out paychecks. The receptionists report to Baldini.

(c) Coordinator facility services – Lead

The facility coordinator/lead person is named Arthur Hebert. He has held that position for many years and knows what needs to be done. He works out of the Manchester facility and his main role is to take care of the physical premises. The lead portion of his position is a new role for him, having commenced in October or November 2004. For the most part, together with the distribution facility assistant and MUA facility assistant, Hebert performs light maintenance in the facility, maintenance of the computers, including downloading of information, and basic work on the Employer's vehicles, but if the work is beyond his ability it is contracted out. Hebert does have a CDL license and can perform the driving part of the MUA job when needed. He does not do this frequently; in the past six to eight months, it is estimated that he has driven for an MUA four to six times. Baldini did not know whether he is certified in everything that

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<sup>22</sup> Volunteers are responsible for greeting donors and assisting them at the blood drives. They may also do some clerical work, as well.



the MUAs are certified in, and could not say whether he would be able to fill in as a full service MUA.

In his new lead role, Hebert helps oversee the distribution facility assistant, the distribution assistant, and the MUA/facility assistant. It is possible that he can assign people things to do, but they often receive work when employees ask them for help or based on who is present, since they do not tend to work the same hours. Hebert does not evaluate employees, hire employees, or have any role in discipline. He does not approve overtime, or approve days off.

Baldini testified that the lead aspect of the position is a step up for Herbert, but he is not considered management. Baldini further testified that the reason she made Herbert a “lead” was really a way of increasing his salary, since he had nowhere to go. Regarding the supervisory nature of the job, it may evolve into more responsibility. He reports directly to Baldini. His job is considered an OSHA Category II job, since, as it states in his job description, it is anticipated that he could “occasionally, on an unplanned basis [be] required to work under conditions where the potential exists for the incumbent to make contact with blood or blood components....”

(d) Distribution facility assistant

The distribution facility assistant is Bruce Biron. Biron works part-time and is the back up person for the distribution assistant who, as is discussed below, drives blood to its destinations. Additionally, if Herbert is on vacation, Biron is responsible for covering the facility coordinator job. As mentioned above, he works with the facility coordinator on maintenance of the facility and he is involved with the weekly download that needs to happen with all the computers. He is cross-trained in MUA tasks, so he can work as a back up. He has not done that in the past six months, other than to bring supplies that were left behind to a blood drive. He also helps prepare supplies on behalf of the MUAs when they have not yet had their 10 hour Department of Transportation required break. He usually works a regular shift of 5:00 am to 3:00 pm, depending on what is needed. He reports directly to Baldini. This position is an OSHA Category I position, since it involves exposure to blood and blood products.

(e) Distribution assistant

The distribution assistant is John Gougin. It is his responsibility to distribute the processed blood and blood products to the hospitals in New Hampshire. He is also responsible for transporting blood collected in New Hampshire to the Employer’s laboratories in Vermont or Dedham. He is hourly paid and does not receive a bonus. An outside courier, as well as Red Cross non-Manchester staff, does the transporting work on weekdays. MUAs do not perform this function. As mentioned above, Biron, the distribution facility assistant, fills in for Gougin when Gougin is out. Gougin reports to Baldini. The distribution assistant position is an OSHA Category I position.

(f) Mobile unit assistant/facility assistant

This is a relatively new position, recently created at the Manchester facility. It is currently filled by Pete Dares, who was previously an MUA before he was promoted to this position. Dares reports to Compliance Training Specialist Kathy Becht, as do the MUAs. He is required to maintain his MUA certification, since he will serve as an MUA backup. He fills in as an MUA a couple of times a month, as needed. His job is an evening position, since one of his primary responsibilities is to make sure that any of the blood that has been collected earlier in the day and re-iced by the MUAs or the donor center assistants (DCAs) gets re-iced again later in the evening before it is shipped to the lab. As mentioned above, Dares also works with the facility coordinator and distribution facility assistant with respect to his responsibilities for building and vehicle assignments. Generally, Dares works from 2:30 pm to 11:00 pm. The MUA/facility assistant is a position in progress, but it is intended to support the MUAs when they come back from a drive. If, for example, an MUA needs time off between shifts, he is supposed to pull the truck up and let the MUA/facility assistant unload the truck. Dares does not work on the computers.

(g) Apheresis coordinators

The apheresis coordinator position is an administrative position. There are three of them in Manchester. These individuals provide administrative, clerical, and recruitment support for the apheresis unit located in Manchester. The apheresis coordinators work below the donor area, to the left of the snack area, where donors can have some refreshments after donating. There is a desk area in the apheresis department. An apheresis donor checks in with the coordinator, their history is taken, and then they go to the apheresis area. The apheresis coordinators report to Team Supervisor Nancy Grant, who supervises all the employees involved in apheresis collection in Manchester.<sup>23</sup> Apheresis collection only occurs in the Manchester facility.

(h) Technical instructor

The technical instructor position can be filled by either an LPN or a collection specialist. This is the person who assists with and provides training. The technical instructor can be involved in the training of collections specialists, LPNs, and RNs, and can train the MUAs or DCAs as well. The technical instructor is the primary trainer when there is training to be done, but if there is none, the instructor works in the role of collections specialist or LPN. There is only one technical instructor at Manchester. The technical instructor reports to Suzanne Daily, one of the compliance training specialists. This is an OSHA Category I position.

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<sup>23</sup> The team supervisors are registered nurses.

### 3. Employees Directly Involved in the Collection of Blood or Blood Products.

As mentioned above, donors can give blood or related blood products at the Manchester facility drives or at mobile sites. Collection department employees at blood drives typically work on a team consisting primarily of MUAs or donor center assistants, collections technicians, and a charge nurse. The MUAs and DCAs perform the same basic function once a drive has begun, but much of the MUAs' job is involved with bringing materials and supplies to a drive, something the DCAs, who work drives in the Manchester facility, do not have to do. All employees working at a drive are supposed to wear badges.

The number of employees scheduled to work a drive depends on the pints of blood goal for that drive. The staff who work a mobile drive include the mobile unit assistants and the collections staff.<sup>24</sup> The collections staff are the employees who take blood from the donors and includes collection specialists, and/or LPNs, and/or RNs. The LPNs working a drive perform the same work as the collection specialists, unless they are serving as the charge nurse for the drive. The charge nurse can be an RN, LPN, team supervisor, or compliance training specialist. It is the charge nurse who is in charge of the drive. All of these employees are OSHA category I.

#### (a) Mobile unit assistants

There are eight MUAs working out of the Manchester facility. The MUAs and the collections staff each have their own defined responsibilities on a mobile drive. The MUAs are responsible for transporting all of the supplies and materials needed to conduct the blood drive. While three of the MUAs have a CDL license, this is not a job requirement, though a CDL license is necessary in order to drive one of the Employer's vehicles, the mobile donor room bus, discussed below. The MUAs have to follow Department of Transportation rules of driving, including taking time off after 10 hours of work and filling out a DOT log. Before an MUA leaves the Manchester facility, he will gather all the supplies, make up ice packs, and make sure everything is ready. The equipment is kept in trucks and the MUA determines the appropriate number of trucks to take on the drive. The equipment includes computers, donor beds, tables, supplies, and canteen items. The MUA then loads the truck and drives it to the blood drive location.

Once at the location, the MUA unloads the truck and sets up the drive, bringing in the donor beds and supplies. The MUA unloads the truck alone. Once enough supplies and equipment have been unloaded, the collections staff has the responsibility of setting up the areas for which they are responsible, as will be addressed below. While the collection employees are setting up the areas for which they are responsible, the MUA has to record information for quality control, about the sealing machine and blood bags. The MUA is responsible for setting up the MUA area(s), which is either a single area

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<sup>24</sup> While recruitment staff or the volunteer coordinator, whose position will be addressed below, may be at a mobile drive, generally they are not.

with a table that is divided into two parts, or two separate areas. The MUA uses these areas to accomplish the work he does during the drive.

During the drive, the MUA is responsible for the units of blood. The blood packs that will be used during the drive include a bag and tubes and each blood pack is assigned a separate number. The MUA numbers the tubes and the bag in each blood pack with that pack's number. The phlebotomist uses the same number to put on the donor record with a UPC sticker. The same number sticker will go on the donor's blood donation record. The phlebotomist puts a sticker with the same number for that donor on the upper right hand side, where it says whole blood number. Then, a volunteer or collection specialist brings this paper and the unit of blood to the MUA table. The MUA then checks that the correct numbers are on all the donor's paperwork and the unit of blood. The MUA is responsible for double checking the number on this form, the bags, the tubes, and any other tags or forms that may be associated with this donation. The MUA then gets rid of the needle packing, seals the bag, and puts the blood on ice in the transporters. The MUA then puts the transporters in a trunk. The blood donation record then goes to the charge nurse, who does the final review on that form.<sup>25</sup> During the drive, the MUA continues to number bags.

Regarding breaks or lunch, during a drive, the MUA can sometimes take a break himself and, if there are two MUAs on a drive, they can cover for each other. There are other times when the charge nurse will have another staff person at the drive cover for the MUA during his break.

The MUAs are the last staff to leave a drive. Once the drive is complete, the MUAs pack up the supplies and equipment and load them onto the Employer's trucks.<sup>26</sup> While other employees are able to go directly home from a drive, the MUAs must return to the Manchester facility in order to unload the equipment and the blood. The MUAs must also fill out certain paperwork, which can take another 45 minutes. Regarding the post-collection functions the MUA is trained to do, about 8 to 10 collection specialists and collection specialist/LPNs are cross-trained in post-collection procedures and perform them as needed. This may be needed, for example, if the MUA has to stop working because of the required DOT 10 hour break.

The MUAs report to Compliance Operations Training Specialist Kathy Becht, as does the MUA/facility assistant mentioned above, 3 collection specialists, 1 RN, and 2 donor center assistants. Although these are the individuals who report to Becht, they do not always work together as a team. Rather, the teams can vary, though the other

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<sup>25</sup> The collection specialist collecting double red cell donations is responsible for the post-collection procedure for those donations.

<sup>26</sup> One of the Employer's vehicles is actually a mobile donor room. It has two donor health history booths, four donor beds, and a canteen area. This vehicle is typically used when there is no place to conduct a drive inside a company or at a shopping mall. The CDL certified MUAs drive this vehicle.

collection specialists all report to four different team supervisors. The MUAs receive their schedule, which lists all the drives, locations, and team coverage. The schedule is also posted on bulletin boards.

MUAs can fill in for DCAs and DCAs can fill in for all of the functions the MUAs perform except for the driving. As mentioned above, the MUA/facility assistant was promoted from the MUA position. Two donor recruitment representatives were also previously MUAs. One was an MUA within the past six to nine months. The other left the organization for a short period of time three years ago and was then hired back when a recruitment position opened up about two years ago. The facility coordinator was an MUA before he was transferred into his current position in 1996.

(b) Donor center assistants

The Employer's two DCAs perform the same function as MUAs, but at drives conducted at the Manchester location. Since they work in the Manchester location, they do not drive, or load or unload equipment from trucks. They are responsible, however, for bringing the supplies to the donor center for a blood drive. They have the same supervisor as the MUAs and, except for the driving function, can fill in for them as needed.

(c) Collection specialists and Collection specialist/LPN (non charge)

There are 40 collection specialists, including one per diem and four collection specialist/LPNs (non charge). These employees perform the same work. Their primary job is to collect blood from donors. There is one collection specialist and two collection specialist/LPNs who are dedicated to apheresis collection, although they could be pulled out in order to work on other drives. Other collection specialists could work in apheresis collection, but they would first need to be trained to perform this function.

At a drive, in addition to performing the blood collection role, the collection specialists set up the health history area, putting out the blood pressure cuffs and everything that goes along with getting the donor's health history. This area includes a table, chairs, screening, and related supplies and equipment. The collections employees also set up the phlebotomy<sup>27</sup> area, where the donor beds are located. The beds are arranged in two-bed units, because each phlebotomist works with two donors at a time. Each area has a chair with wheels and there are pods on either side, which are plastic containers that hook onto the chair. The pods are where all of the supplies that are used during phlebotomy are kept. The Genesis Mixer is also set up. This equipment is a scale that the blood bag sits on and it measures and mixes the blood as it is being collected.

The donations that the collection staff are responsible for collecting varies. At the mobile locations, donors may donate whole blood by phlebotomy or may donate double

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<sup>27</sup> Phlebotomy is the act of putting the needle in the donor's arm in order to collect the blood.

red cells. At the Manchester facility, donors may also donate blood components by apheresis.

Other areas that the collections staff set up before the drive begins include the recovery area, with beds and supplies needed if a donor does not feel well. The registration area is also set up by the collections staff. The collections staff also performs quality control on the equipment and they list everything used in the drive. During the drive, in addition to taking blood, the collection specialist completes part of the donor form and puts a sticker on the upper right hand side of the form. This form is returned to the MUA with the blood, as mentioned above.

The collection specialists report to team supervisors. The three collection staff dedicated to apheresis report to team supervisor Nancy Grant.

## **B. The Law**

The Board's procedure for determining an appropriate unit under Section 9(b) is to examine first the petitioned-for unit. If that unit is appropriate, then the inquiry into the appropriate unit ends. If the petitioned-for unit is not appropriate, the Board may examine the alternative units suggested by the parties, but it also has the discretion to select an appropriate unit that is different from the alternative proposals of the parties. See, e.g., *Overnite Transportation Co.*<sup>28</sup> There is nothing in the statute requiring that the unit for bargaining be the **only** appropriate unit, or the **ultimate** unit, or the **most** appropriate unit; the Act requires only that the unit be "appropriate." *Bartlett Collins Co.*<sup>29</sup> The Board generally attempts to select a unit that is the smallest appropriate unit encompassing the petitioned-for employee classifications. See, e.g., *R & D Trucking*,<sup>30</sup> and *State Farm Mutual Automobile Insurance Co.*<sup>31</sup> In *Faribault Clinic*,<sup>32</sup> the Board held that in the health care industry, as in any other, unions are not required to organize in the most comprehensive unit available or even the most appropriate unit – they need only select an appropriate unit.

The Employer contends that the petitioned-for-unit, limited to the MUAs, is not appropriate and that the unit must also include all non-supervisory employees working in the Manchester location. Although all of these employees clearly share some terms and conditions of employment and may constitute an appropriate unit, as previously indicated, the Board has substantial discretion when it selects an appropriate bargaining

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28 331 NLRB No. 85, slip op. at 2 (2000).

29 334 NLRB No. 76 (2001).

30 327 NLRB 531 (1999).

31 163 NLRB 677 (1967).

32 308 NLRB 131, 133 (1992).

unit. The proper test to apply here is the one that applies to a non-acute health care facility and that is the “empirical community of interest test.” *Park Manor Care Center*.<sup>33</sup> Although blood banks, in structure, operations, and staffing are unique and quite different from other healthcare facilities, in *Park Manor*, the Board noted certain general principles applicable to unit determinations in non-acute care facilities. The Board noted that in exercising its discretion to determine appropriate units, it must steer a careful course between two undesirable extremes. If the unit is too large, it may be difficult to organize and difficult for the union to represent. If the unit is too small, it may be costly for the employer to deal with and may even be deleterious for the union by too severely limiting its constituency and bargaining strength. The Board’s goal is to find a middle-ground position, to allocate power between labor and management by “striking the balance” in the appropriate place, with units that are neither too large nor too small. *Park Manor*.<sup>34</sup> Based on this, it is clear that in determining the appropriate unit in this case, I must consider this balance and traditional community of interest factors.<sup>35</sup> The Board traditionally considers various community of interest factors, including past bargaining history; general working conditions, wages and benefits; degree of functional integration; common supervision; nature of employee skills, training, and function; interchange and contact among employees; and work location. See *Washington Palm, Inc.*<sup>36</sup> When these factors are considered and balanced here as the Board suggested in *Park Manor*, it is clear that the smallest appropriate unit is one that includes all of the employees who deal with collecting blood from donors, but excluding all other employees.

### C. Analysis

As mentioned above, no bargaining history exists for the employees at issue, so that factor cannot be considered. All of the Employer’s employees are covered by the same personnel policies, employee handbook, and benefit package. Most of the employees are hourly paid, though some of the recruitment employees are salaried and entitled to a bonus. While these factors show some community of interest between all of

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33 305 NLRB 872 (1991).

34 Supra, at 876 quoting 53 Fed.Reg. 33904, 284 NLRB at 1534.

35 The Board also suggested that prior cases involving the type of health care facility in dispute be considered. In this regard, I note that there are numerous blood bank cases in which the Board approved limited bargaining units other than wall-to-wall units. *Sacramento Medical Foundation Blood Bank*, 220 NLRB 904 (1975); *Greene County Chapter American Red Cross*, 221 NLRB 776 (1975); and *Laboratory Corporation of America Holdings*, 341 NLRB No. 140 (2004). In *Syracuse Region Blood Center*, 302 NLRB 72, supra, the Board found a wall-to-wall unit appropriate, though the MUAs and other employees already represented were excluded from the bargaining unit by agreement. However, in that pre-*Park Manor* case, the Board applied a disparity of interest test.

36 314 NLRB 1122, 1126-1127 (1994).

the Employer's employees, I conclude that these are outweighed by the other community of interest factors.

The employees involved in the collection of blood or blood products, including the MUAs, share a particularly strong community of interest. They work in teams and are supervised by team leaders or compliance operation training specialists. They have a very high degree of contract and functional integration, as they are all involved in the processing of donors and collection of their blood and related products. The DCAs and MUAs, for example, do the exact same work once at a drive, though the DCAs do not drive vehicles. All of these employees work together at fixed donor sites, and they travel and work together as a team on mobile drives. If an MUA is alone on a drive, a collection specialist can cover the MUA's lunch break.<sup>37</sup> While it is true that within this group of employees only the MUAs drive vehicles, with respect to every other aspect of their jobs, some of the other employees in this group are cross-trained and can cover for them in all that they do. In the case of the collections staff handling double red cell donations, they are in fact performing the same work at the same time.

All of these employees are required to wear badges at drives and they share the same OSHA classification. These employees share unique interests and concerns given their daily, intimate contact with donors, and exposure to donors' blood and other fluids. They are a distinct and homogenous group of employees whose duties and interests set them apart from the other employees.<sup>38</sup>

The recruitment employees have a distinctly different function which undermines their community of interest with the employees directly involved in blood related activities. These employees are generally responsible for recruiting donors and setting up blood drives. The bulk of their work is performed in advance of the collection work. Telerecruiters in particular work on telephones in an office setting. They have no personal contact with donors. The employees involved in blood collection work on the front lines at the fixed sites or out in the field at mobile sites. It appears that the recruitment employees have limited, if any, contact with the MUAs and the collection employees. These employees do not typically go to blood drives. On the rare occasions that they are present, it is in a customer service capacity. They do not perform any of the tasks that the MUAs, DCAs, or the collection specialists perform.<sup>39</sup>

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37 While there was some evidence that the facility coordinator-lead and the distribution facility assistant help the MUAs unload and deliver forgotten supplies, this did not appear to be done on a regular basis. The MUA/facility assistant, on the other hand, did appear to assist the MUAs on a regular basis and is certified to act as an MUA, if needed, and has in fact done so. For this reason, I will include him in the unit.

38 I will include the technician instructor in the unit, since she works as a collection specialist when she is not involved in training.

39 While two donor recruitment representatives were previously MUAs, one of those two was rehired after about one year into an open recruitment position. It does not appear that this is a typical career path for MUAs.



The distribution facility assistant, distribution assistant, and the coordinator facility services-lead are not directly involved in the blood collection process and enjoy an independent community of interest. The distribution facility assistant and the coordinator facility service-lead are, for the most part, involved in maintenance of the Employer's facility, its computers, and its vehicles. While the distribution facility assistant is trained to fill in for the MUAs, he does not appear to do this. Instead, the assistance he provides MUAs is limited to picking up forgotten supplies or loading when an MUA needs more break time under DOT regulations. The coordinator facility services-lead can perform the driving aspect of the MUA job if needed, but he does not do this frequently and he does not perform the other MUA job functions. The distribution assistant spends his time transporting blood to various locations. While these employees may help the MUAs on occasion, they do not appear to have regular contact with the MUAs or the other collection employees. All report directly to Baldini and, for the most part, cover for each other. I have included the MUA/facility assistant in the unit even though the coordinator facility services-lead, Arthur Hebert, oversees him. This is because despite Hebert's nominal oversight, the evidence indicates that the MUA/facility assistant is supervised separately by the team supervisor who oversees the MUAs.

The schedulers are responsible for coordination of staffing and scheduling the employees covering the blood drives. There is no interchange between these employees and the employees directly involved in the blood collection process. The contact they have is limited to call outs. The skills utilized by the schedulers are markedly different from the skills of employees included in the unit. They are supervised directly by Baldini.

The remaining positions are clerical in nature. The administrative assistant, the receptionists, and the apheresis coordinators all perform largely secretarial, clerical, and administrative duties. There is no evidence of interchange with the employees in the unit. While the apheresis coordinators do have some contact with apheresis donors when they arrive, their primary function is administrative.

#### **IV. Conclusion**

It is clear from the above that while there is some functional integration between all of the non-professional positions, since they are all working towards the Employer's blood drive goals, a bargaining unit including all the employees who work together as teams, working on blood drives, is an appropriate unit based on the strong community of interest these employees share. This unit is the middle-ground unit of the kind the Board discussed in *Park Manor*. Regarding the Employer's argument that I am bound by my earlier decision concerning this bargaining unit (Case 1-RC-20193), that is simply not the case. The cases cited by the Employer in this regard were unfair labor practice cases and are not relevant here. See *Pacific Greyhound Lines*<sup>40</sup>, where the Board noted that nothing in the Act requires or supports the application of a principle analogous to that of the

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40 9 NLRB 557, 573 (1938).

judicial doctrine of res judicata in matters involving a determination of the appropriate unit for collective bargaining purposes. Rather, I am making my decision in this case based upon the facts presented in this record. In making this determination, I consider the earlier decision to be a circumstance, but not a decisive one.<sup>41</sup>

Accordingly, based on the above and the stipulations of the parties at the hearing,<sup>42</sup> I find that the following employees of the Employer constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time collection specialists, collection specialist/LPN (non-charge), mobile unit assistants, mobile unit assistant/facility assistants, technician instructors, and donor center assistants employed by the Employer at its Manchester, New Hampshire facility, but excluding all other employees, confidential employees, professional employees, guards, and supervisors as defined in the Act.

### **DIRECTION OF ELECTION**<sup>43</sup>

An election by secret ballot shall be conducted by the Regional Director among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work

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41 Regarding the Employer's comparison of this case to *Brattleboro Retreat*, 310 NLRB 615 (1993), I find that case to be inapposite. In *Brattleboro Retreat*, the parties agreed to be bound by the earlier factual record that had been developed one year earlier. Here, many more years have passed since the prior determination and there was no such agreement.

42 The parties stipulated that the unit found appropriate should exclude the four collections specialists/LPN charge, professional employees, which category includes the eight staff nurses, confidential employees, which category includes the administrative coordinator, Donna Splaine, and supervisors as defined in the Act, which category includes Director of New Hampshire Operations Maureen Baldini; Team Supervisors Nancy Grant, Robert Tibbetts, Janet Ostrum, and Linda Chevalier; Compliance Training Specialists Katheen Becht, Elizabeth Brown, Suzanne Daily, and Mor Jane Iller; Recruitment Manager Ellin O'Hara; and Tele-recruiting Supervisor Ellin Wlodyka.

43 As the unit found appropriate is broader than the petitioned-for unit, in accordance with the Board's usual practice, I shall provide the Petitioner a reasonable period of time, not to exceed ten days, from the date of this Decision and Direction of Election in which to demonstrate the requisite showing of interest among employees in the unit found appropriate, unless a Request for Review is timely filed by the Petitioner, in which event the submission of the additional showing of interest will be due, if appropriate, 10 days from the date of the Board's action on the Request for Review. In the event that the Petitioner does not submit such additional evidence within the applicable ten day period, the Direction of Election shall be vacated. Alternatively, the Petitioner will be permitted to withdraw its petition without prejudice upon written notice to me within 10 days from the date of the Direction of Election.

during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date, and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for purposes of collective bargaining by International Brotherhood of Teamsters, Local 633, AFL-CIO.

### **LIST OF VOTERS**<sup>44</sup>

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of the statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*,<sup>45</sup> *NLRB v. Wyman-Gordon Co.*<sup>46</sup> Accordingly, it is hereby directed that within seven days of the date of this Decision, two copies of an election eligibility list containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the Regional Director, who shall make the list available to all parties to the election. *North Macon Health Care Facility*.<sup>47</sup> In order to be timely filed, such list must be received by the Regional Office, Thomas P. O'Neill, Jr. Federal Building, Sixth Floor, 10 Causeway Street, Boston, Massachusetts, on or before April 29, 2005. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

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<sup>44</sup> The *Excelsior List* may initially be used by the Regional Director to assist in determining whether there is an adequate showing of interest. The Regional Director shall make the list available to all parties to the election when and if she determines that the Petitioner has made an adequate showing of interest in the unit found appropriate.

<sup>45</sup> 156 NLRB 1236 (1966).

<sup>46</sup> 394 U.S. 759 (1969).

<sup>47</sup> 315 NLRB 359 (1994).

## **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision and Direction of Election may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by May 6, 2005.

/s/ Ronald S. Cohen

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Ronald S. Cohen, Acting Regional Director  
First Region  
National Labor Relations Board  
Thomas P. O'Neill, Jr. Federal Building  
10 Causeway Street, Sixth Floor  
Boston, MA 02222-1072

Dated at Boston, Massachusetts  
this 22nd day of April, 2005.

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